

REMARKS/ARGUMENTS

Status of the Claims

Applicants respectfully acknowledge that the Examiner has allowed claims 20-22 and 24.

Claims 7, 15-19, 23, and 29 have been cancelled in the interest of furthering prosecution of the instant application and not to limit the scope of Applicants' claimed invention. Applicants expressly reserve the right to file one or more continuing applications to protect the subject matter of the cancelled claims.

Claims 1, 6, 9, and 30 have been amended.

Claims 1, 6, and 9 have been amended as recommended by the Examiner to point out more distinctly in step (c) that detecting the PCR product indicates the presence of a mutant allele of a wheat *AHASL* gene. This amendment is fully supported by the original claims and specification.

Claims 1 and 30 have been amended without prejudice or disclaimer to add the recitation "wherein said mutant-allele-specific primer comprises the nucleotide sequence set forth in SEQ ID NO: 3". Support for this amendment can be found in the original claims, particularly original claims 7, 21, 32, and 34, and in the specification.

New dependent claims 42-75 have been added. Support for the new claims can be found in the original claims, particularly original claims 2-5, 7, 14, 16-19, 21, and 29, and in the specification.

No new matter has been added by way of amendment of the claims or by the addition of the new claims.

Claims 1-6, 8, 9, 14, 20-22, 24, 30, 31, and 42-75 are pending.

Reexamination and reconsideration of the application as amended are respectfully requested. In any event, the Examiner is respectfully requested to enter the above amendments for the purpose of furthering prosecution.

The Rejection of the Claims under 35 U.S.C. §112, Second Paragraph, Should Be Withdrawn

Claims 1-9 and 14 have been rejected under 35 U.S.C. §112, second paragraph, for indefiniteness. Claim 7 has been cancelled. Claims 1, 6, and 9 have been amended. New claims 42-75 have been added. This rejection is respectfully traversed and should not be applied to the newly submitted claims.

The Examiner has indicated that claims 1-9 and 14 are unclear because while the preamble states "method for detecting a mutant allele", there is not a step in which any mutant allele is detected. The Examiner has suggested amending claims 1, 6, and 9 to include "wherein detecting said PCR product indicates the presence of a mutant allele of a wheat *AHASL* gene."

Although Applicants respectfully disagree with the position of the Examiner that claims 1-9 and 14 are indefinite, Applicants have amended claims 1, 6, and 9 as recommended by the Examiner in the interest of furthering prosecution of instant application and not to limit scope of their claimed invention. Accordingly, claims 1-6, 8, 9, and 14 are not indefinite.

In view of the amendments and the above remarks, it is submitted that the rejection of the claims under 35 U.S.C. § 112, second paragraph, should be withdrawn and not applied to the newly submitted claims.

The Rejection of the Claims under 35 U.S.C. §103(a) Should Be Withdrawn

Claims 1-5, 8, 14-19, 23, and 29-31 remain rejected under 35 U.S.C. § 103(a). Claims 15-19, 23, and 29 have been cancelled. Claims 1 and 30 have been amended. New claims 42-75 have been added. This rejection is respectfully traversed.

In particular, claims 1, 8, 14, 15, 23 and 29 remain rejected under 35 U.S.C. § 103(a) as being unpatentable over Hucl *et al.* (WO 2003/014357) in view of Liu *et al.* (1997, *Genome Res.* 7:389-398) and Kwok *et al.* (1990, *Nucl. Acids Res.* 18:999-1005). Claims 2, 4, 5, 16, 18, 19, and 30 remain rejected under 35 U.S.C. § 103(a) as being unpatentable over Hucl *et al.* in view

of Liu *et al.* and Kwok *et al.* and in further view of Stanton (2002, US Patent No. 6,475,736). Claims 3, 17, and 31 remain rejected under 35 U.S.C. § 103(a) as being unpatentable over Hucl *et al.* in view of Liu *et al.* and Kwok *et al.* and Stanton and in further view of Werle *et al.* (1994, *Nucl. Acids Res.* 20:4354-4355).

Although Applicants continue to believe that the claims are not obvious in view of any one of the cited combinations of references for the reasons of record stated in their prior responses to the Office, Applicants have cancelled claims 15-19, 23, and 29 and have amended independent claims 1 and 30 to be directed to subject matter that the Examiner has indicated is neither anticipated nor obvious. In particular, Applicants have amended claim 1 to incorporate the limitation of claim 7 that the mutant-allele-specific primer comprises the nucleotide sequence set forth in SEQ ID NO: 3. Similarly, Applicants have amended claim 30 to recite the limitation of allowed claim 21 that the mutant-allele-specific primer comprises the nucleotide sequence set forth in SEQ ID NO: 3. Accordingly, Applicants submit that the amended claims are not obvious in view of any of the cited combinations of references.

In addition, Applicants have added new dependent claims 42-75. These new dependent claims are based on original dependent claims 2-5, 7, 14, 16-19, 21, and 29. Because each of these new dependent claims is entirely within the scope of the independent claim from which it depends, Applicants submit that the new claims are not obvious in view of any of the cited combinations of references.

Applicants have amended the instant application without prejudice or disclaimer as described hereinabove in the interest of furthering prosecution of the instant application and not to limit the scope of their claimed invention. Applicants expressly reserve the right not only to file one or more continuing applications directed to embodiments of their invention not encompassed by the present claims, but also to address any claim rejection in such a continuing application that is the same or similar to a claim rejection raised by the Office in the instant application.

In view of the amendments and the above remarks, it is submitted that the rejection of the claims under 35 U.S.C. § 103(a) should be withdrawn.

CONCLUSION

In view of the above amendments and remarks, Applicants submit that the objections to the claims and the rejections under 35 U.S.C. §§ 103 and 112, second paragraph, are overcome. Applicants respectfully submit that this application is now in condition for allowance. Early notice to this effect is solicited. In any event, the Examiner is respectfully requested to enter the above amendments for the purpose of furthering prosecution.

If in the opinion of the Examiner a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

/david m. saravitz/

David M. Saravitz
Registration No. 55,593

Customer No. 55392
ALSTON & BIRD LLP
Bank of America Plaza
101 South Tryon Street, Suite 4000
Charlotte, NC 28280-4000
Tel Raleigh Office (919) 862-2200
Fax Raleigh Office (919) 862-2260

ELECTRONICALLY FILED USING THE EFS-WEB ELECTRONIC FILING SYSTEM OF THE UNITED STATES PATENT & TRADEMARK OFFICE ON March 20, 2008.